



## Wolf Delisting and Harvest Season

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Wolves had once disappeared from Wisconsin, but they began to return in the 1970s. The Department of Natural Resources (DNR) now estimates a wolf population of over 1,000 in the state.<sup>1</sup> In a [final rule](#) that takes effect in January, the U.S. Fish and Wildlife Service<sup>2</sup> (USFWS) delisted the gray wolf<sup>3</sup> under the federal Endangered Species Act (ESA). The delisting clears the way for a state wolf harvesting season, unless the delisting is paused or invalidated by a court. This issue brief summarizes state law relating to establishing a wolf hunting season, together with relevant background.

### FEDERAL DELISTING AND NEW FINAL RULE

Under the ESA, USFWS lists animal and plant species as either endangered or threatened, based on factors<sup>4</sup> relating to the risk of extinction.<sup>5</sup> USFWS must also periodically review the list and remove species that no longer satisfy the listing criteria. [16 U.S.C. s. 1533 (c) (2).] A person may not “take”<sup>6</sup> a listed plant or animal without a federal permit, meaning that a state may not allow hunting or trapping of a federally listed species. [16 U.S.C. s. 1538 (a) (1).]

As gray wolf numbers improved in Wisconsin and other states, USFWS attempted to delist the gray wolf in multiple rule actions, beginning in 2007. After a [federal delisting action](#) took effect in January 2012, Wisconsin enacted [legislation](#) requiring DNR to establish an annual wolf harvesting season. DNR subsequently held three wolf seasons, in 2012, 2013, and 2014. Hunters and trappers harvested 117, 257, and 154 wolves, respectively, during each of those seasons.<sup>7</sup> However, in 2014 a federal court invalidated the 2011 federal delisting decision and directed that the gray wolf be relisted as a federally endangered species in the western Great Lakes region, including Wisconsin.<sup>8</sup>

In its new final rule, which was published on November 3, 2020, and takes effect on January 4, 2021, USFWS seeks to rectify legal concerns raised in past court cases by no longer dividing the gray wolf species into distinct population segments, as past delisting rules had done.<sup>9</sup> Instead, the new rule delists the gray wolf species, including all previously delineated subspecies, throughout the lower 48 states. [[85 Fed. Reg. 69778](#).]

Advocacy groups have indicated they will challenge the new rule. Interested groups argue, in part, that the rule fails to satisfy the ESA’s delisting criteria for the still recovering gray wolf population, particularly in the Midwest.<sup>10</sup> In contrast, USFWS has [characterized](#) the gray wolf species as having successfully recovered and Wisconsin’s gray wolf population as “strong and stable.”

### REQUIREMENTS FOR A STATE WOLF SEASON

No statutory changes are needed before DNR can hold a wolf harvest. The Wisconsin statutes require DNR to allow the hunting and trapping of wolves in Wisconsin if the gray wolf is federally delisted. DNR must do so with a season starting on the first Saturday in November<sup>11</sup> and ending on the last day of February. State law prohibits hunting or trapping a wolf except as authorized by a license issued by DNR. [s. 29.185 (1m), (2) (a), and (5) (a), Stats.]

Following the announcement of the new federal delisting, DNR [indicated](#) that it welcomes the responsibility of wolf management and will move forward with a deliberative process involving both

public and tribal participation. State law requires DNR to do both of the following to implement a wolf harvesting season:

- Divide the state into wolf harvesting zones and identify the zones in a wolf management plan.
- Issue a license and wolf carcass tag to each person who applies, subject to certain conditions, or, if more people apply than there are licenses, distribute 50 percent of the licenses through a lottery system and 50 percent of the licenses through a cumulative preference system, based on a method and preference categories established by DNR.

[s. 29.185 (3) (bn) and (5) (b), Stats.]

In addition, DNR may close a wolf harvesting zone to hunting and trapping wolves, if the department determines that the closure is necessary to effectively manage the state's wolf population. [s. 29.185 (5) (c), Stats.]

DNR divided the state into wolf harvesting zones prior to the wolf hunting seasons held in 2012, 2013, and 2014. [s. NR 10.20, Wis. Adm. Code.] At that time, DNR also created a cumulative preference system, and published a [handbook](#) of wolf hunting regulations. However, DNR may need to reexamine or update some or all of the following before opening a new season:

- The number of available licenses and carcass tags per wolf harvesting zone.
- Whether any zone should be closed to hunting and trapping.
- The preference categories for the cumulative preference system and method for determining which applications are subject to that system.
- Programming for DNR's online licensing system and harvest registration systems.
- The regulatory handbook.<sup>12</sup>

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<sup>1</sup> See DNR, *Wisconsin Gray Wolf Monitoring Report 15 April 2019 Through 14 April 2020*, available at <https://dnr.wisconsin.gov/sites/default/files/topic/WildlifeHabitat/wolfreport2020.pdf>.

<sup>2</sup> USFWS is a bureau within the U.S. Department of Interior.

<sup>3</sup> The gray wolf (*canis lupus*), also sometimes called the "timber wolf," is the species of wolf found in Wisconsin. A separate species, the Mexican wolf, remains listed under the ESA.

<sup>4</sup> Those factors include: (a) the present or threatened destruction, modification, or curtailment of a species' habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting the species' existence. [16 U.S.C. s. 1533.]

<sup>5</sup> Wisconsin law similarly requires DNR to establish a list of species that are threatened and endangered in this state. [s. 29.604, Stats.; ch. NR 27, Wis. Adm. Code.] DNR [removed](#) the gray wolf from the state threatened and endangered species list in 2004. DNR continues to monitor the gray wolf's status as a species of "special concern." Currently, the gray wolf falls within the category of "special concern" that is "apparently secure in Wisconsin due to an extensive range and/or many populations or occurrences, but with possible cause for some concern as a result of local recent declines, threats, or other factors."

<sup>6</sup> In this context, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. [16 U.S.C. s. 1532 (19).]

<sup>7</sup> Reports and statistics for the 2012, 2013, and 2014 wolf harvesting seasons are available at <https://dnr.wisconsin.gov/topic/hunt/wolf/index.html>.

<sup>8</sup> *Humane Society v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. 2014) (aff'd by *Humane Society v. Zinke*, 865 F.3d 585 (D.C. Cir. 2017)).

<sup>9</sup> Previous federal actions had divided gray wolves in the western Great Lakes region and wolves found in the western United States into distinct population segments. Generally, wolves found in Wisconsin and other western Great Lakes states are somewhat smaller, and have smaller prey, than wolves in the western United States. Although the court decisions differ as to the reasoning, the decisions agreed that USFWS had improperly utilized distinct population segments under the ESA.

<sup>10</sup> On November 5, 2020, several advocacy groups released a notice of intent to sue, available at <https://hslf.org/sites/default/files/2020-11/2020.11.05%20Wolves%2060-Day%20Notice.pdf>.

<sup>11</sup> 2015 Wisconsin Act 285 changed the start date from October 15 to the first Saturday in November.

<sup>12</sup> For the 2020-21 seasons, DNR has merged all hunting regulations into a [single handbook](#). If DNR held an abbreviated wolf season after the federal delisting rule takes effect in January 2021, it is possible that a revised or supplementary handbook could be created to include wolf hunting and trapping regulations.